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Counsel for Martin Franchises, Inc.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

ESTATE OF VIOLA B. SPAULDING,
et al.,

Plaintiffs,

v.

YORK CLEANERS, INC., *et al.*

Defendants.

Case No. C 08-00672

JOINT INITIAL CASE MANAGEMENT
CONFERENCE STATEMENT AND
[PROPOSED] ORDER

CMC Date: May 16, 2008
CMC Time: 8:30 a.m.
Court Rm.: 8 on the 19th Floor

Jury Trial Demanded
Trial Date: None set

AND RELATED COUNTERCLAIMS,
CROSS-CLAIMS, AND THIRD-
PARTY CLAIMS

1 Plaintiffs and Counter-Defendants Estate of Viola B. Spaulding, Florence
2 Spaulding, Trustee; Lynn Spaulding, doing business as Spaulding Enterprizes; Tina
3 Spaulding Ward, doing business as Spaulding Enterprizes, and the Conservatorship of
4 Eileen Spaulding (collectively, “Spaulding”); Defendants and Counter-Claimants David
5 Victor Lewis and York Cleaners, Inc. (“York”); and Defendant, Cross-Complainant, and
6 Third-Party Claimant Martin Franchises, Inc. (“Martin”) jointly submit this Initial Case
7 Management Statement and Proposed Order and request the Court to adopt it as its
8 Initial Case Management Order in this case. Where the parties have set forth separate
9 statements related in the below sections the parties do not adopt each others statements
10 in this joint initial case management statement and proposed order.

11 **1. Jurisdiction and Service**

12 Defendants and Cross-Defendants Seth Dole and Ruth Dole have not been served
13 as their whereabouts (if they are still living) are unknown. If it is determined that Seth
14 Dole and Ruth Dole are deceased, but were insured, service will be made on their
15 insurance carrier pursuant to Probate Code section 550 *et seq.*

16
17 There is also a dispute as to whether Estate of Barnard Lewis has been properly
18 served as counsel for York contends service on David Victor Lewis is ineffective
19 because he has not been appointed executor of his father’s estate.

20 Service on Third-Party Defendant Cooper Industries has been attempted, but
21 service has not yet been accomplished. After some initial discovery, Spaulding and
22 York may amend to include Cooper in their pleadings. In addition, discovery may
23 identify additional persons who should be parties to this action. In such case the parties
24 will meet and confer regarding a stipulation to amend the pleadings.

25 The parties stipulate to electronic service of documents not filed electronically
26 with the court (*e.g.*, discovery requests and responses)

2. Facts

This is an environmental case between a landowner and the former owners and operators of a dry cleaning business over who ought to be held responsible for addressing the contaminated soil and groundwater at and around the property. Martin operated or franchised a One-Hour Martinizing dry cleaning business at the property in the 1960s. It is believed that Barnard Lewis bought the franchise around 1972 and continued to operate under the Martin mark for a period of time and then changed the name to York Cleaners. Spaulding alleges that during both the Martin and York operations, tetrachlorethylene (“PCE”) was used as the industrial solvent in the dry cleaning equipment and that PCE was released into the environment at the site and has been detected in the soil and groundwater. The California Regional Water Quality Control Board – San Francisco Bay Region is requiring Spaulding to investigate and remediate the contamination.

The principal factual issues in dispute will be the source, nature, extent, and timing of the contamination. In addition, York Cleaners, Inc. and David Victor Lewis contend that any contamination occurred as a result of the negligence and breach of lease by Spaulding and/or as a result of products liability related issues with the equipment manufactured and/or installed by Martin and/or Cooper. York and Lewis also contend that a settlement was reached in the prior lawsuit between the Spauldings and the Lewis’ pursuant to which all claims were waived and released under California Civil Code section 1542. Spaulding disputes that any of its acts or omissions have adversely impacted the soil or groundwater at the site. Spaulding also disputes that the alleged concrete floor with no impermeable membrane is associated with the dry cleaning equipment or spills of PCE. Spaulding further disputes that it failed to maintain the premises in good condition and repair. Finally, Spaulding disputes that it waived its rights under California Civil Code section 1542 in a previous action filed in Marin

1 County Superior Court. Martin disputes any liability as Cooper, and not Martin, was the
2 franchisor from the 1960s until May 1978. In May 1978, Martin purchased the franchise
3 from Cooper in an asset purchase. Martin cancelled the franchise in 1981. Martin's
4 knowledge base is very small. It has no knowledge about information during critical
5 times in 1960s and 1970s and has very few records. Thus, at this time, Martin must
6 contest most facts as simply unknown.

7 **3. Legal Issues**

8 **a. Spaulding's Disputed Legal Issues.**

9 Spaulding disputes that the arbitration clauses contained in the lease agreements
10 have any force or effect as they are not initialed by any of the parties. Spaulding
11 disputes that the alleged California Civil Code section 1542 waiver of rights bars the
12 claims made in this lawsuit.

13 **b. York's Disputed Legal Issues.**

14 York disputes the legal standing of the various plaintiffs to maintain the action
15 based on the settlement reached in prior litigation. York further disputes its liability
16 under the applicable law, and York further contends that any liability is properly that of
17 the land owners, prior or subsequent business operators and/or the equipment
18 manufacturers and installers.

19 **c. Martin's Disputed Legal Issues.**

20 Martin disputes any legal liability. Martin was not the franchisor for any
21 meaningful time regarding this matter. Martin has no relevant facts. Legal obligations,
22 if any, on behalf of any franchisor would be that of Cooper. Any attempt at liability of
23 Martin should be subject matter of Cooper's indemnity obligation to Martin.

24 **4. Motions**

25 **a. Spaulding's Dispositive Motion Statement:**

26 Spaulding intends to file a Motion for Preliminary and Permanent Injunction
27
28

1 against Defendants, a Motion for Summary Judgment or for partial Summary Judgment,
2 and will likely move to summarily remove various affirmative defense raised by
3 Defendants. Spaulding requests leave to bring more than one summary judgment motion
4 in this matter related to various affirmative defenses and related to liability of the current
5 defendants and future defendants which may be served or added in this matter.

6 **b. York's Dispositive Motion Statement:**

7 York intends to file a dispositive motion relating to the prior settlement of
8 litigation between the parties. York may also move for summary judgment or
9 adjudication on various legal theories asserted by Spaulding and various items of
10 damages.

11 **c. Martin's Dispositive Motion Statement:**

12 Martin needs to conduct discovery to help assist at dispositive motions regarding
13 (1) no legal liability; and (2) summary judgment against Cooper regarding its indemnity
14 obligation.

15 **5. Amendment of Pleadings**

16 The parties anticipate that pleadings may need to be amended after some initial
17 discovery to add additional parties. In such case the parties will meet and confer
18 regarding a stipulation to amend the pleadings.
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20 **6. Evidence Preservation**

21 The facts of this case span into the 1960s. The parties will diligently attempt to
22 preserve evidence relevant to the issues reasonably evident in this action.

23 **7. Disclosures**

24 Spaulding, York, and Martin will serve their initial disclosures on May 9, 2008
25 pursuant to the court's Order Setting Initial Case Management Conference and ADR
26 Deadlines.

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8. Discovery

No discovery has been taken to date. Spaulding believes that based on the number of parties, the number of witnesses which may need to be called, and the extensive factual history related to this matter, the default limitation imposed by the Federal Rules on discovery are not appropriate. York disagrees. As a compromise and pursuant to Fed. R. Civ. P. 26(f), the parties request that the initial discovery limitations be set, unless modified by the parties in writing or by order of this Court, as follows:

- a. Depositions: Depositions of fact and expert witnesses will be limited to one seven hour day. No other limitation on depositions shall apply.
- b. Interrogatories: Interrogatories shall be limited to 50 interrogatories.
- c. Request for Admissions: There shall be no limitation on the number of requests for admissions. The parties may agree to issue one set of request for admissions for multiple parties represented by the same counsel.
- d. Request for Inspection and Documents. There shall be no limitation on the number of requests for inspection and documents.

9. Related Cases

David Victor Lewis's answer and counterclaim identifies a previous dispute between some of the parties: *Lynn Spaulding v. David Lewis and Barnard Lewis*, Case No. CIV994752 (Marin County Superior Court). The case was resolved and is no longer pending.

10. Relief

The complaint, counterclaim, cross-claims, and third-party complaint seek damages for costs of investigation and cleanup, injunctive relief, contribution, indemnity and declaratory relief. The cost of investigation and cleanup is unknown at this time.

11. Settlement and ADR

The parties have agreed and stipulated to attempt to resolve this matter by

1 mediation. The court has ordered that mediation is to be completed before July 25,
2 2008.

3 **12. Consent to Magistrate Judge for All Purposes**

4 The parties request that this case not be assigned to a U.S. Magistrate.

5 **13. Narrowing of Issues**

6 It is anticipated that many facts can be stipulated to such as time frame of
7 ownership and operation of dry cleaning business, use of PCE, types of dry cleaning
8 equipment used, and others through stipulated facts. The parties do not anticipate that
9 bifurcation of issues, claims, or defenses will be necessary.

10 **14. Expedited Schedule**

11 Based on the amount of discovery that will be necessary and the technical nature
12 of an environmental case, this case cannot be handled on an expedited basis.

13 **15. Scheduling**

14 The parties suggest the following dates:

15	Cut-off date for Amending Pleading	September 29, 2008
16	General Discovery Cutoff	February 2, 2009
17	Expert Designation	March 2, 2009
18	Supplemental Expert Designation	March 16, 2009
19	Dispositive Motions Heard By	April 3, 2009
20	Expert Discovery Cutoff	April 13, 2009
21	Motion <i>In Limine</i>	April 27, 2009
22	Response to <i>Motion In Limine</i>	May 4, 2009
23	Trial Date	May 11, 2009

24 **16. Trial**

25 The parties estimate that the jury trial in this case will take approximately three
26 to four weeks.
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17. Disclosure of Non-Party Interested Entities or Persons

The parties have or will file the “Certification of Interested Entities or Persons” as required by Civil Local Rule 3-16.

Spaulding perceives that the following non-party may have an interest in this case:

(1) The California Regional Water Quality Control Board – San Francisco Bay Region and (2) The Travelers Insurance Company.

DATED: May 8, 2008

PALADIN LAW GROUP® LLP

By: /S/
Bret A. Stone
Counsel for Spaulding

DATED: May 8, 2008

COX, WOOTTON, GRIFFIN, HANSEN &
POULOUS LLP

By: /S/
Gregory W. Poulous
Counsel for David Victor Lewis and York
Cleaners, Inc.

DATED: May 8, 2008

SEDGWICK, DETERT, MORAN & ARNOLD
LLP

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CASE MANAGEMENT ORDER

The Case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order. In addition, the Court orders the following:

DATED: May __, 2008

United States District Judge